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Attorneys for Respondent MARTIN LUTHER KING, JR.-MARCUS GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-Filing

ORIGINAL
FILED

AUG 27 2007

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HO RIM KAM,

Petitioner,

vs.

MARTIN LUTHER KING, JR.-MARCUS
GARVEY SQUARE COOPERATIVE
BOARD OF DIRECTORS,

Respondent.

C 07

Case No.

4414

NOTICE OF REMOVAL OF ACTION
UNDER 28 USC §1441(b)
(FEDERAL QUESTION)

SBA

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT RESPONDENT MARTIN LUTHER KING, JR.-
MARCUS GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS hereby removes to
this Court the State Court action described below.

1. On August 6, 2007, an action, specifically a Petition and Application for Issuance of
Peremptory Writ of Mandamus was commenced in the Superior Court of the State of California
in and for the County of San Francisco, entitled HO RIM KAM VS. MARTIN LUTHER KING,
JR.-MARCUS GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS, as Case
Number CPF-07-507493 (hereto as Exhibit 1).

2. The first date upon which Respondent received a copy of said Petition and Application for Issuance of Peremptory Writ of Mandamus was on August 8, 2007. (A copy of the Proof of Service by hand delivery is attached hereto as Exhibit 2)

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1331, and is one which may be removed to this Court by Respondent pursuant to the provisions of 28 U.S.C. §1441(b) in that it arises under the United States Housing Act of 1937, 42 USC §1437 *et. seq.* and its implementing regulations, including but not limited to: 24 CFR, part 5 (General HUD Program Requirements), 24 CFR, part 17 (Administrative Claims per Federal Tort Claims Act); and 24 CFR, part 28 (Fraud). Petitioner's claim is also one that technically implicates 5 U.S.C. §706 and arguably the Fifth Amendment right to due process contained in the United States Constitution.

4. The instant Petition for Peremptory Writ of Mandamus protests actions taken by the Federal Government. Specifically, Petitioner has premised his claim for relief on the United States Department of Housing and Urban Development's purported incorrect conclusion that Petitioner had fraudulently concealed his Illinois home on multiple occasions in order to receive Section 8 housing subsidies. Because Petitioner, on multiple occasions, misrepresented his assets on his HUD Form 50059s, HUD concluded that he owed the federal government additional rent ("carrying charges"). Respondent's By-laws provide for automatic removal of a *Board member* should the Petitioner fall behind in rent by 30 days. In addition, the By-laws call for removal of an *Officer* by a vote of the Board of Directors. Since HUD concluded that Petitioner was behind in rent by 30 days, he was automatically removed as a Director, and subsequently removed as Treasurer by a majority vote of the Board of Directors. Thus, the issue posed by the Petition, whether Petitioner can properly be a member (or even a Treasurer) on the Board of Directors, implicates federal law and impugns actions taken by HUD.

5. The relief sought also creates a substantial issue of federal law. Petitioner has requested that the Court determine whether Petitioner properly reported his income per federal housing laws in order to be eligible for Section 8 housing subsidies and hence, not be in arrears of rent. HUD concluded that he had not properly reported his income. Petitioner essentially requests that the Court issue an order reversing HUD's conclusion regarding his automatic

1 removal (per the By-laws) from the Board of Directors and compelling his reinstatement to the
2 Board of Directors. Consequently, Petitioner's relief is dependent upon interpretation of federal
3 laws regarding eligibility, recertification of, and verification of income for Section 8 recipients.

4 6. In short, federal question jurisdiction is proper because the Federal Government has a
5 strong interest in ensuring persons who have fraudulently reported assets in order to obtain
6 federal subsidies not be a member of a Boards of Directors (with decision-making powers) over
7 housing projects that the Federal Government subsidizes.

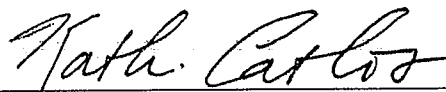
8 7. Although HUD is curiously not a named respondent in this matter, Petitioner has
9 imputed HUD's conduct to Respondent, thus warranting federal court jurisdiction. The
10 averments in the Petition and its supporting papers show that the relevant By-laws which govern
11 the conduct of the project and the Board of Directors automatically expel Petitioner from the
12 Board due to his own conduct in contravention of HUD guidelines regarding
13 eligibility/verification of Section 8 recipients per federal housing laws. The gravamen of
14 Petitioner's Petition is that HUD was wrong and that his removal from the Board was essentially
15 unconstitutional; violated his due process rights; and/or arbitrary, capricious, or was an abuse of
16 HUD's discretion, and hence of no validity. It is therefore apparent that this controversy
17 concerns the validity of HUD's actions, thus conferring this Court with federal question
18 jurisdiction.

19 8. At this time, there are no other Defendants or Respondents other than the present
20 Respondent MARTIN LUTHER KING, JR.-MARCUS GARVEY SQUARE COOPERATIVE
21 BOARD OF DIRECTORS.

22 Respectfully submitted,

23 DATED: August 27, 2007

24 KAUFMAN DOLOWICH & VOLUCK LLP

25 

26 Katherine S. Catlos, Esq.

27 Attorneys for Respondent MARTIN LUTHER
28 KING, JR.-MARCUS GARVEY SQUARE
COOPERATIVE BOARD OF DIRECTORS